

General Information Letter: Under 86 Ill. Admin. Code Section 100.7010(g)(1), no withholding is required from deferred compensation paid to a nonresident, even if the compensation is allocable to Illinois.

February 22, 2002

Dear:

This is in response to your letter dated February 11, 2002, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

I worked for COMPANY in CITY1 and CITY2 Illinois for eight years. COMPANY has its headquarters in CITY3, MA. The address is:

COMPANY
STREET ADDRESS
CITY3 , MA ZIP CODE

I am not working now and am being paid by COMPANY regularly out of my deferred compensation account. However, they are withholding Illinois income taxes even though I do not live in Illinois and my permanent state of residence is in California. According to them they are required to do so. Last year I filed estimated taxes with the state of California as well as the yearly return.

I need a letter from your department stating that the COMPANY need not withhold the Illinois State Tax.

This issue is governed by an Illinois Income Tax regulation. 86 Ill. Adm. Code 100.7010 (g) (1) states as follows:

Under certain contractual unfunded deferred compensation agreements, payments are made by an employer to an employee for service rendered at an earlier date. In many such agreements, the employee receiving deferred compensation payments is not required to render any current service whatsoever, whereas in others he may be required to hold himself

available to render advisory and consultative service, if called upon to do so, and to refrain from competition, but in either case, the amount of compensation is unrelated to any service being currently rendered. Payments made under any such deferred compensation agreement will be deemed to meet the tests set forth in subsection (a) above for compensation paid in Illinois if paid to the individual while a resident of this State. Conversely, payments made under such an agreement will be deemed not to be compensation paid in this State and will not be subject to withholding if paid to the individual while a nonresident. Amounts paid to nonresidents under deferred compensation agreements may be allocated to Illinois under IITA Section 302 (a) in accordance with Section 100.3120 (b) (1) notwithstanding the fact that such amounts will be deemed not to be compensation paid in Illinois for purposes of IITA Section 701 and will **not be subject to withholding** (emphasis added.)

Thus, while your deferred compensation income might be taxable in Illinois, no Illinois income tax withholding is required. For your reference, we are enclosing a copy of 86 Ill. Adm. Code 100.7010.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax